

In the Supreme Court of the United States
OCTOBER TERM, 1990

**FLORIDA DEPARTMENT OF LABOR AND
EMPLOYMENT SECURITY, PETITIONER**

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the interest provision of the Debt Collection Act of 1982, 31 U.S.C. 3717, barred the United States from collecting interest on the contractual debt petitioner owed to the federal government.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A2-A3) is unreported. The opinion of the district court (Pet. App. A4-A5) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 13, 1990. The petition for a writ of certiorari was filed on July 12, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. During the 1970s, petitioner, the Florida Department of Labor and Employment Security, entered into contracts and grant agreements with the federal government under which the State of Florida received funds under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. 801 *et seq.* (Supp. V 1981) (repealed 1982). Pet. App. A6.¹ In those contracts and agreements, petitioner agreed to monitor and supervise subgrantees and contractors carrying out the State's CETA programs in order to ensure that recipients of federal funds complied with CETA and governing regulations. See 29 U.S.C. 813(a)(11) and (12) (Supp. V 1981); 20 C.F.R. 676.10-4(g), 676.75-1 to 676.75-3. In addition, the contracts and agreements obligated petitioner to preserve records and undergo periodic audits and examinations, all of which were subject

¹ Congress repealed CETA in 1982 by enacting the Job Training Partnership Act (JTPA), Pub. L. No. 97-300, 96 Stat. 1324 (codified at 29 U.S.C. 1501 *et seq.*). Section 181(d) of the JTPA, 29 U.S.C. 1591(d), provides in pertinent part that

[a]ll * * * permits, grants, contracts, certificates, licenses, and privileges, which have been issued under the Comprehensive Employment and Training Act (as in effect on the date before October 13, 1982), or which are issued under that Act on or before September 30, 1983, shall continue in effect until modified or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law other than this chapter.

Section 181(e) of the JTPA, 29 U.S.C. 1591(e), provides that the JTPA

shall not affect administrative or judicial proceedings pending on October 13, 1982, or begun between October 13, 1982, and September 30, 1984, under the Comprehensive Employment and Training Act.

to review by the Secretary of Labor. See 29 U.S.C. 835(a)(1) (Supp. V 1981).

Between 1974 and 1977, petitioner received approximately \$102 million in CETA funds from the federal government. As a result of an audit and administrative review by the Department of Labor, the Department found that petitioner had improperly expended a small portion of those CETA funds, and in January 1983, determined that petitioner owed the federal government \$413,791 plus interest. Petitioner disputed its liability and obtained a hearing before an administrative law judge. Pet. App. A6-A7.

2. In February 1984, the ALJ affirmed petitioner's liability for a reduced debt of \$173,557.61, and under 20 C.F.R. 676.91(f), that decision became the final decision of the Secretary of Labor. On petitioner's appeal challenging its liability for the principal debt, the court of appeals summarily affirmed the Secretary's decision. *Florida Department of Labor & Employment Security v. United States Department of Labor*, No. 84-3233 (11th Cir. Feb. 26, 1985).

The Secretary thereafter notified petitioner "that interest was being assessed * * * and was chargeable if [the debt was] not paid by May 19, 1985." Pet. App. A8.² Petitioner, however, told the Secretary in August 1985 that "no resources were available from which to make payment." *Id.* at A9. The federal government later filed this action in the United States District Court for the Northern District of Florida against petitioner to collect the outstanding certified debt plus interest. Pet. 5; Pet. App. A4-A5.

² In April 1985, the Secretary had further reduced petitioner's debt to \$173,268.61. Pet. App. A8.

3. In May 1989, the district court ordered petitioner to pay the debt plus interest. Pet. App. A4-A5. In the district court, petitioner argued that the Secretary's action was barred by the six-year limitations period of 28 U.S.C. 2415. The court rejected that argument, stating that

[t]his action is *not* an action founded upon a contract, rather, this is a suit by the government to recover improperly dispersed federal grant funds as determined by the Administrative Law Judge and affirmed by the Eleventh Circuit Court of Appeals.

Pet. App. A4-A5. The court found that "[i]t was only after the Court of Appeals entered its judgment that the instant suit was instituted to collect the amount found due." *Id.* at A5. In these circumstances, the court held, "[t]he viability of the government's claim and the amount due to it * * * will not, and cannot, be re-litigated here." *Ibid.*

After the district court issued its judgment, petitioner filed a motion to amend that judgment, claiming for the first time that the interest provision of the Debt Collection Act of 1982, 31 U.S.C. 3717, barred the Secretary from collecting interest on the debt petitioner owed to the federal government. In June 1989, the district court summarily denied that motion in a margin order. *United States v. State of Florida, Department of Labor & Employment Security*, No. TCA, 87-40166-MMP (N.D. Fla. June 22, 1989).

4. The court of appeals affirmed. Pet. App. A2-A3. It agreed with the district court that "this action is not time barred by the provisions of 28 U.S.C. § 2415." Pet. App. A3.³ Citing its recent decision in

³ Petitioner has not sought further review of that aspect of the court of appeals' judgment.

Florida Department of Labor & Employment Security v. United States Department of Labor, 893 F.2d 1319 (11th Cir. 1990), petition for cert. pending, No. 89-1765 (filed May 10, 1990), the court of appeals also concluded that the district court "properly awarded interest pursuant to 31 U.S.C. § 3717 (g) (2)." Pet. App. A3.⁴

ARGUMENT

Petitioner contends (Pet. 5-10) that the court of appeals misconstrued 31 U.S.C. 3717(g) (2) and that the court of appeals' decision conflicts with two cases denying authority to charge interest against the States—*Perales v. United States*, 751 F.2d 95 (2d Cir. 1984), and *Pennsylvania v. United States*, 781 F.2d 334 (3d Cir. 1986). Petitioner has raised the identical claims in its petition for certiorari in *Florida Department of Labor & Employment Security*

⁴ In that decision, the court of appeals recognized that under 31 U.S.C. 3717(g) (2), the Debt Collection Act's interest provision does not apply "to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982." 893 F.2d at 1322. The court found that petitioner's CETA contracts and grant agreements with the federal government were "in effect" in October 1982, and thus the Debt Collection Act was inapplicable. *Ibid.* As the court noted, petitioner

assumed continuing responsibilities for monitoring the actions of its contractors and subrecipients to ensure that their actions complied with the program's statutory and regulatory requirements. Among other things, these responsibilities included the continued monitoring and auditing of subrecipients to ensure that their records were being kept in accordance with program regulations and to ensure that the subgrant funds were being expended in compliance with CETA. * * *

Id. at 1323. (footnote omitted).

v. *United States Department of Labor*, petition for cert. pending, No. 89-1765, and does not suggest any material difference between this case and that one. For the reasons stated in our brief in opposition in that case, see Br. in Opp. 5-6 & n.7, the court of appeals' decision here is correct and is consistent with the *Perales* and *Pennsylvania* cases.⁵

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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⁵ We have provided an additional copy of our submission in *Florida Department of Labor & Employment Security v. United States Department of Labor*, No. 89-1765, to counsel for petitioner in this case.

